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Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

**GM LORETO P. SEARES, JR.,**  
*Petitioner,*

**G.R. No. 254336**

Members:

- versus -

GESMUNDO, C.J., *Chairperson*  
CAGUIOA,  
LAZARO-JAVIER,  
LOPEZ, M., (on wellness leave)  
LOPEZ, J., *JJ.*

**NATIONAL ELECTRIFICATION  
ADMINISTRATION BOARD,**  
*Respondent.*

Promulgated:

NOV 18 2021

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**DECISION**

**LAZARO-JAVIER, J.:**

**The Case**

This Petition for Review assails the following dispositions of the Court of Appeals in CA G.R. SP No. 161126 entitled *GM Loreto P. Seares, Jr. v. National Electrification Administration Board*:

1. Decision<sup>1</sup> dated June 15, 2020 affirming the administrative liabilities of petitioner Loreto P. Seares (Seares) for Grave Misconduct, Gross Negligence, Dishonesty, and Gross Incompetence in the performance

<sup>1</sup> Penned by Associate Justice Franchito N. Diamante and Associate Justices Germano Francisco D. Legaspi and Ruben Reynaldo G. Roxas, *rollo*, pp. 25-51.

of official duties as General Manager of the Abra Electric Cooperative, Inc. (ABRECO); and

1. Resolution<sup>2</sup> dated November 10, 2020 denying his motion for reconsideration, with modification.

### Antecedents

In October 2007, petitioner got appointed as General Manager of ABRECO, an electric cooperative duly registered<sup>3</sup> with the Cooperative Development Authority (CDA).<sup>4</sup> Section 1(e) of ABRECO's by-laws enumerates the functions and responsibilities of a General Manager, *viz.*:

- i. Oversee the overall day-to-day business operations of the cooperative by providing general direction, supervision, management and administrative control over all the operating departments subject to such limitations as may be set forth by the BOD or the GA;
- ii. Formulate and recommend in coordination with the operating departments under his/her supervision, the Cooperative's Annual and Medium Term Development Plan, programs and projects, for approval of the BOD and ratification of GA;
- iii. **Implement the duly approved plans and programs of the cooperative and any other directive or instruction of the BODs;**
- iv. Provide and submit to the BODs monthly reports on the status of the cooperative's operation *vis-à-vis* its target and recommend appropriate policy or operational changes, if necessary;
- v. Represent the cooperative in any agreement, contract, business dealings, and in any other official business transaction as may be authorized by the BODs;
- vi. [Sit] as an *ex-officio* member of the board of directors **without voting right[s];**
- vii. Ensure compliance with all administrative and other requirements of regulatory bodies; and
- viii. Perform such other functions as may be prescribed in the By-laws or authorized by the GA.<sup>5</sup> (Emphases supplied)

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<sup>2</sup> *Id.*

<sup>3</sup> Under Republic Act No. 9520, otherwise known as Philippine Cooperative Code of 2008.

<sup>4</sup> *Rollo*, p. 36.

<sup>5</sup> *Id.* at 14 and 77.

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Republic Act No. 10531<sup>6</sup> (RA 10531), otherwise known as the National Electrification Administration Reform Act of 2013 grants the National Electrification Administration Board (NEAB) supervisory and disciplinary powers over all electric cooperatives, viz.:<sup>7</sup>

SECTION 6. A new section, to be designated as Section 4-A, is hereby inserted under Presidential Decree No. 269, as amended to read as follows:

“SEC. 4-A. *Supervisory Powers of the NEA Over Electric Cooperatives.* — In the exercise of its power of supervision over electric cooperatives, the NEA shall have the following powers:

(a) issue orders, rules and regulations, *motu proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions on all matters affecting the electric cooperatives;

(b) issue preventive or disciplinary measures including, but not limited to, suspension or removal and replacement of any or all of the members of the board of directors and officers of the electric cooperative, as the NEA may deem fit and necessary and to take any other remedial measures as the law or any agreement or arrangement with NEA may provide, to attain the objectives of this Act; and

(c) appoint independent board of directors in the electric cooperative.

“The NEA shall, in the exercise of its supervisory and disciplinary powers under this Act, strictly observe due process of law.”

On the basis of Section 6 of RA 10531, National Electrification Administration’s (NEA) Electric Cooperative Management Services, through its Electric Cooperative Audit Department (ECAD), *motu proprio* conducted an audit of ABRECO covering the period from July 1, 2013 to October 31, 2016. The audit yielded the following results:<sup>8</sup>

a) ABRECO’s operation had consistently retrogressed and further deteriorated due to its looming financial obligations brought about by its huge restructured loan with the Power Sector Assets and Liabilities Management Corporation (PSALM); unpaid obligations to the National

<sup>6</sup> *National Electrification Administration Reform Act of 2013, Republic Act No. 10531, May 7, 2013.*

<sup>7</sup> *Rollo*, pp. 36-370.

<sup>8</sup> *Id.* at 37-40.

Grid Corporation of the Philippines (NGGP), Philippine Electricity Market Corporation (PEMC), the Wholesale Electricity Spot Market (WESM) and to the AP-Renewables, Inc. (APRI), in detail as follows:

Cash General Fund (Per Bank Recon 12-3116)	₱969,482.10 134,296.68	₱1,103,778.78
Cash on Hand (Per DCPR 12-29-16)		
Consumers Accounts Receivables including unrecorded Universal Charge (1.88 Mos. Sales)		₱78,871,687.33
Advances to Officers and Employees		₱7,880,742.22
Accounts Payable-Powers (per [Statement of Account]) PEMC as of 11.07.16 (4 mos. in Arrears) NGCP as of 12-31-16 (2 mos. in Arrears)	₱56,424,956.90 ₱11,843,770.00	₱68,268,726.90
PSALM (Restructured Arrears) as of 12-31-16		₱395,857,246.12
APRI (Outstanding balance of Restructured Account as of March 2017)		₱9,568,666.22
NEA Loan Amortization (Arrears – 19.89 Qtrs.)		₱32,599,952.26

- b) Delayed mandatory remittances to other government agencies such as the Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth) and the Home Development Mutual Fund (HDMF) or PAG-IBIG. The monthly premiums for the mandatory obligations deducted from the salaries of the employees including the Electric Cooperative's (EC) counterpart were not remitted to the concerned government agencies on time for which the EC employees failed to avail the loan privileges and the benefits due them;
- c) The EC was constrained to borrow funds from outside sources to pay its power bills to avoid disconnection, however said borrowings which resulted [in] interest charges on various loans paid to private creditors bear a monthly interest rate of 5% to a maximum of 6% per month;
- d) For the ten (10) month period of 2016, the Coop realized a net margin of ₱32,846,660.00 while net loss of ₱171,790.11 was incurred in 2015. The realized net margin was mainly due to over-charging of transmission charges to its consumers. Starting July 2015, the Coop stopped using the formula prescribed by the ERC in computing the monthly generation rate passed-on to member-consumers. Instead, it used a fixed rate of ₱6.6156 per kilowatt-hour as its passed on generation rate which is higher than the actual WESM rate that resulted in an estimated difference of

₱128,135,206.21 from January to October 2016 alone to the great prejudice of its consumers;

e) Result of [the] Operations as of 31 October 2016:

1. System losses of 15.40% in 2015 and 16.6% as of October 2016 are above the system loss cap of 13%;
2. Collection efficiency is only 93% in 2016[,] thus, the Management resorted to borrowings from private creditors to cover up shortfalls in collection for payment of power bills to power supplier to avoid disconnection;
3. Penalties due to late payment of power bills imposed by power suppliers and payment of interests on restructured accounts with PSALM and NGCP amounted to ₱14,097,221.75;
4. The EC was constrained to borrow funds from outside sources to pay its power bills to avoid disconnection, however[,] borrowings resulted [in] interest charges on various loans paid to private creditors totaling to ₱13,567,225 for 2015 and 2016.

f) There is a breakdown on the system of disbursements and cash handling; collections are no longer deposited in the EC's depository banks while disbursements were made on cash basis, taken from the collections resulting to indiscriminate and uncontrolled disbursements of funds that weakened the internal control system;

g) On the Subsidy Fund, non-submission of pertinent documents regarding the utilization of the subsidy fund for the construction of electrification of thirty-five (35) sitios and one (1) barangay. The electrification for 5 barangays was awarded to Accurate Electrical Supply and Engineering for which the mobilization payment of ₱9,100,000.00 is way above the maximum mobilization limit of 15% of the contract price provided in R.A. No. 9184 was (sic) paid in advance even prior to the Issuance of Notice of Award and Notice to Proceed.

h) On the EC's procurement procedures:

1. All transactions for the period under audit did not pass through the proper procurement procedure and no bidding conducted for transactions which involves huge amount contrary to the provisions of x x x Procurement Guidelines and Procedures of R.A. No. 10531;
2. Unit costs of materials purchased are much higher than the NEA Price Index;
3. Procurement of equipment and electrical materials, and repair and maintenance of vehicles were paid despite the lack of necessary supporting documents. Also, payments to suppliers with substantial amounts were made through advances to EC employees;

4. Disbursements for Coop's Motor Vehicles[.]

The description of some tires, car mags and other car accessories procured did not conform to the specifications of these items being used for EC vehicles.

Cash advances totaling to ₱155,765.00 of Mr[.] Edgar Blanes, (Utility Worker of the Coop and the one who regularly accompanies [GM Loreto Seares, Jr.]) intended for fuel expenses was liquidated for the purchase of spare parts and car accessories for high-end vehicles and matting for Eco Sport.

GM Seares reimbursed to the Coop the amount of ₱602,114.00 under JV#1403-00099 dated 27 March 2014 the purchase of various spare parts for ABRECO vehicles including some car accessories for high-end vehicles such as upholstery BMW 36.5i, 1 pc. Body Kit for GSR Fros. 4 pcs. 20-inch rim (Mags) set 6 holes, 4 pcs 215.40 17-inch rim GT, etc.

Mario Casaclang, OGM Driver was allowed to reimburse the amount of ₱988,575.06 as payment for the purchase of various spare parts for motor vehicles paid under CV#1409-0016 dated 02 September 2014, however the same was not presented for review and the validity and propriety of the disbursements could not be validated.

i) Indiscriminate grant of excessive cash advances to officers and employees brought the balance of this account to ₱7,880,742.22 as of 31 October 2016. The advances for travel per diem and daily allowances availed in 2015 and 2016 in the total amount of ₱3,005,800 were directly charged to expense while only fuel expenses during travel were recorded to Cash Advance.<sup>9</sup>

Based on the audit report, the electric cooperative was found to be in a state of continuous operational retrogression which was attributed to the alleged ineffective management of its General Manager, herein petitioner.<sup>10</sup>

Consequently, NEAB ordered petitioner's preventive suspension for a period of thirty (30) days which was later extended to another sixty (60) days.<sup>11</sup> It also created Task Force Duterte Abra Power (TFD-AP) to act as ABRECO's interim board of directors.<sup>12</sup>

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<sup>9</sup> *Id.* at 39-40.

<sup>10</sup> *Id.* at 108.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 40.

NEAB<sup>13</sup> considered the audit report as a complaint against petitioner and ABRECO's board members and other officers (petitioner *et al.*). As part of due process, the NEA-Administrative Committee required petitioner *et al.* to file their respective answers to the audit report.<sup>14</sup>

In his verified answer, petitioner countered:

**First.** He merely implemented the policies approved by the board of directors, particularly Board Resolution No. 48, Series of 2015<sup>15</sup> which was passed to prevent the July 2015 incident wherein the Wholesale Electricity Spot Market (WESM)<sup>16</sup> rate suddenly spiked up, rendering ABRECO's collections during the immediately preceding month insufficient to cover the aforesaid spike up rate. It was for this reason that ABRECO was compelled to charge its member-consumers a higher generation rate.<sup>17</sup>

**Second.** NEA did not extend the financial assistance ABRECO requested for in order to meet up its urgent piling obligations. This constrained ABRECO to secure loans from private creditors to pay off its power bills and other obligations. NEA did not deny, as it actually affirmed that indeed ABRECO was in dire need of financial assistance to sustain its operation.<sup>18</sup>

**Third.** Since its mobile computer electric reader (PALM) units were defective, ABRECO resorted to manual reading which slowed down the recording of electric consumption of its member-consumers. The domino effect was the delayed distribution of billing statements to its member-consumers who also got delayed in their payments. This series of events eventually rendered ABRECO incapable of paying off its loan obligations as they fell due.<sup>19</sup>

**Fourth.** He should not be pressed for the late remittance of the premium contributions to the Social Security System (SSS), Philippine Health Insurance Corporation (Philhealth) and Pag-IBIG of ABRECO's employees. While the concerned employees initially pursued their claims before the labor tribunals, they already executed their respective affidavits of desistance upon

<sup>13</sup> Through the NEA-Administrative Committee.

<sup>14</sup> *Rollo*, p. 138.

<sup>15</sup> RESOLUTION ENDORSING THE ATTACHED RATES SCHEDULE AS BASIS FOR SUBSEQUENT BILLING STARTING AUGUST 2015 TO ADDRESS THE UNSTABLE AND UNPREDICTABLE NATURE OF MARKET PRICES AT THE PHILIPPINE ELECTRICITY MARKET CORPORATION, IN CONSIDERATION OF ABRECO'S FULL EXPOSURE IN THE ELECTRICITY SPOT MARKET AND THE UNAVAILABILITY OF BILATERAL CONTRACT REQUIRED FOR DIRECT MEMBERSHIP WITH THE [Philippine Electricity Market Corporation] [or] PEMC.

<sup>16</sup> The Wholesale Electricity Spot Market (WESM) is a venue for trading electricity as a commodity. It was created by virtue of Section 30 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001. WESM is where the generators sell their excess capacities not covered by contracts and where the customers buy additional capacities on top of their contracts. (<https://industry.gov.ph/wp-content/uploads/2015/08/Wholesale-Electricity-Spot-Market-WESM-101-by-Melinda-Ocampo-PEMC-President.pdf>) (October 21, 2021)

<sup>17</sup> *Id.* at 79-80 and 100.

<sup>18</sup> *Id.* at 37.

<sup>19</sup> *Id.* at 40.

realizing that petitioner and the members of the Board were not at fault for such late remittance.<sup>20</sup>

*Fifth.* ABRECO cannot deposit its collections to its designated depository bank due to several garnishment orders issued by the National Labor Relations Commission (NLRC) against it.<sup>21</sup>

*Last.* ABRECO complied with the methods of procurement required under Republic Act No. 9184 (RA 9184)<sup>22</sup> in all its procurement transactions.<sup>23</sup>

### **The Ruling of the National Electrification Administration Board**

In its Decision<sup>24</sup> dated May 7, 2018, the NEAB found petitioner, *et al.* guilty of Grave Misconduct, Dishonesty, and Gross Incompetence in the Performance of Official Duties, *viz.*:

X X X X

**“WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding Respondent GM LORETO P. SEARES, JR., GUILTY of GRAVE MISCONDUCT, DISHONESTY and GROSS INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES and meted the PENALTY OF REMOVAL FROM SERVICE WITH ITS ACCESSORY PENALTIES OF PERPETUAL DISQUALIFICATION FOR REINSTATEMENT OR RE-EMPLOYMENT IN ANY ELECTRIC COOPERATIVES, DISQUALIFICATION TO RUN AS CANDIDATE FOR A BOARD OF DIRECTOR POSITION IN ANY COOPERATIVE AND FORFEITURE OF RETIREMENT BENEFITS. (Emphases added)**

X X X X

This Decision is immediately executory.

The Human Resources Department of ABRECO is directed to implement the penalty effective immediately and to render a report to NEA within five (5) days from receipt of this Decision.

**SO ORDERED.**<sup>25</sup>

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<sup>20</sup> *Id.* at 115.

<sup>21</sup> *Id.* at 40.

<sup>22</sup> Otherwise known as Government Procurement Reform Act.

<sup>23</sup> *Rollo*, pp. 40, 109-110, 115 and 120-121.

<sup>24</sup> Signed by (Alternate of the Chairman) Atty. Felix William B. Fuentebella and members Agustin L. Maddatu, Alipio Cirilo V. Badelles, Rene M. Gonzales, and Edgardo R. Masongsong, *rollo*, pp. 103-130.

<sup>25</sup> *Id.* at 128-129.



On **Grave Misconduct, Dishonesty, and Gross Incompetence** petitioner, *et al.* were found to have 1) failed to effectively discharge their functions as ABRECO's officers when they started charging ABRECO's consumers passed on generation rate more than the prescribed rate by the Energy Regulatory Commission (ERC);<sup>26</sup> 2) dictated their own passed on generation rate to ABRECO consumers, instead of the prescribed ERC rate;<sup>27</sup> 3) violated RA 9184 when they prematurely issued a check voucher in favor of Accurate Electrical Supply and Engineering (Accurate) for its Sitio Electrification Program/Barangay Line Enhancement Program without first conducting a post qualification evaluation, even before the required Notice to Proceed had been issued and publication of the Invitation, and despite the fact that Accurate's lowest bid of ₱15,950,561.78 was still higher than the ₱15,946,321.72 approved budget for the project.<sup>28</sup>

In addition, the dwindling financial situation of ABRECO was found to have been caused by petitioner's mismanagement of the electric cooperative's affairs. Too, petitioner's so-called gross incompetence was imputed to have caused ABRECO's piling loans due to delayed payments. Further, petitioner was found to have failed to exercise due diligence when he approved the reimbursements of significant amounts to ABRECO's drivers and utility workers, albeit these employees were not even entitled to claim these reimbursements in the first place. The purchases sought to be reimbursed pertained to spare parts and accessories for vehicles which did not match with the vehicles of ABRECO. As for petitioner's own claim for reimbursement in the amount of ₱602,114.00, he was only able to liquidate ₱207,930.00.<sup>29</sup>

NEAB rejected petitioner's defense that ABRECO's failure to pay its obligations on time was due to the delayed collections from its consumers. Despite the lapse of almost two (2) years, petitioner and ABRECO's board of directors still failed to devise ways and means to resolve the issue on meter reading, hence, the delay in the payment collections just remained unresolved.<sup>30</sup>

While the dispositive portion of the NEAB's decision did not include a finding of liability against petitioner for **Gross Negligence or Gross Neglect of Duty**, the body of the decision nonetheless discussed his supposed liabilities therefor. For gross negligence, he allegedly failed to ensure the timely remittance of the employees' premium contributions to the concerned government agencies. As General Manager with supervisory powers, he purportedly failed to ensure that all the departments of ABRECO were regularly performing their functions.<sup>31</sup>

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<sup>26</sup> *Id.* at 121.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 125-126.

<sup>29</sup> *Id.* at 126-128.

<sup>30</sup> *Id.* at 123.

<sup>31</sup> *Id.* 124-125.

Under the 2013 NEA Administrative Rules of Procedure, grave misconduct, dishonesty, and gross neglect of duty are classified as grave offenses. Each carries the supreme penalty of removal from office even on the first offense. On the other hand, gross incompetence is classified as a less grave offense punishable by suspension for a period of thirty-one (31) to ninety (90) days for the first offense.<sup>32</sup>

Consequently, NEAB imposed on petitioner the supreme penalty of removal<sup>33</sup> from office. It took into consideration the three infractions allegedly committed by petitioner, two of which were appreciated as aggravating circumstances. He was also meted the accessory penalties of perpetual disqualification from re-employment in any electric cooperatives, disqualification to run as member of board of director of any cooperative, and forfeiture of retirement benefits pursuant to Sections 2 and 3 (a), Rule VII of the 2013 NEA Administrative Rules of Procedure.<sup>34</sup>

Petitioner's subsequent motion for reconsideration was denied under Resolution dated April 29, 2019.<sup>35</sup>

### Proceedings before the Court of Appeals

On appeal via Rule 43 of the Rules of Court before the Court of Appeals, petitioner reiterated his arguments before NEAB. He further faulted NEAB for dissolving ABRECO's board of directors allegedly in excess of its authority. Under Republic Act No. 9520,<sup>36</sup> (RA 9520) otherwise known as the Philippine Cooperative Code of 2008, it is the CDA which is supposedly vested with such authority.<sup>37</sup>

On the other hand, NEAB accused petitioner anew of grave misconduct, serious dishonesty, and gross incompetence in the management of ABRECO during his term as General Manager.<sup>38</sup>

<sup>32</sup> *Id.* at 122, 125, 126, and 128.

<sup>33</sup> *Id.* at 128.

<sup>34</sup> SECTION 2. DISABILITIES/ACCESSORIES TO ADMINISTRATIVE PENALTIES.

- a. Disqualification for reinstatement or reemployment in any electric cooperative;
- b. Disqualification to run as candidate for a Board of Director position in any cooperative;
- c. Forfeiture of retirement benefits.

SECTION 3. ADMINISTRATIVE DISABILITIES INHERENT IN CERTAIN PENALTIES.

- a. The penalty of removal shall carry with it that of cancellation of eligibility to run for the position of EC director, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in any Electric Cooperative unless otherwise provided in the decision;

x x x

<sup>35</sup> *Rollo*, p. 42.

<sup>36</sup> AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008."

<sup>37</sup> *Rollo*, pp. 43-44.

<sup>38</sup> *Id.* at 45.

### The Ruling of the Court of Appeals

In its assailed Decision<sup>39</sup> dated June 15, 2020, the Court of Appeals affirmed. First off, it ruled that NEAB's power to suspend, remove, or replace any or all of the members of an electric cooperative's board of directors and officers is expressly granted by Presidential Decree No. 269<sup>40</sup> (PD 269), as amended by RA 10531.<sup>41</sup>

As for **Grave Misconduct**, it found petitioner liable therefor in view of the following illegal acts he purportedly committed:

- 1) He willfully violated the law when he allowed ABRECO to apply the fixed rate of ₱6.6156 per kilowatt-hour as passed on generation rate to its consumers instead of the ERC prescribed formula;<sup>42</sup>
- 2) He failed to review and carefully oversee the operations of the different departments under his supervision as ABRECO's General Manager;
- 3) He did not ensure the timely remittance of the employees' Philhealth, SSS, and Pag-IBIG premium contributions to the appropriate government agencies;
- 4) He did not exercise due diligence when he allowed ABRECO's funds to be deposited elsewhere and not in its depository bank in violation of ABRECO's internal accounting procedures;
- 5) He approved dubious reimbursements in favor of ABRECO's drivers or utility workers supposedly for the purchase of motor vehicle spare parts for ABRECO's vehicles, albeit these items did not even match the specifications of ABRECO's existing set of vehicles;<sup>43</sup> and
- 6) He breached the procurement rules and procedures under RA 9184 when he awarded the project Sitio Electrification Program/Barangay Line Enhancement Program to Accurate, albeit Accurate's bid was higher than the actual budget for the project. In addition, he allowed the advance payment of the contract price before a Notice to Proceed was issued in violation of RA 9184.<sup>44</sup>

On **Serious Dishonesty**, the Court of Appeals found petitioner to have deliberately adopted highly irregular accounting and internal control policies by (1) allowing the deposit of ABRECO's funds elsewhere other than its

<sup>39</sup> Penned by Associate Justice Franchito N. Diamante and Associate Justices Germano Francisco D. Legaspi and Ruben Reynaldo G. Roxas, *rollo*, pp. 25-51.

<sup>40</sup> Entitled CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES (August 6, 1973).

<sup>41</sup> *Rollo*, pp. 49-50.

<sup>42</sup> *Id.* at 48

<sup>43</sup> *Id.* at 46-78.

<sup>44</sup> *Id.* at 48-49.

depository bank; (2) approving dubious reimbursements; and (3) allowing improper bid procedures, thus, causing serious damage and grave prejudice to ABRECO. Too, petitioner paid ₱3,223,000.00 as legal fees for services rendered to ABRECO and as partial satisfaction of judgments against ABRECO in labor cases, albeit the payment was not authorized by any board resolution.<sup>45</sup>

Anent **Gross incompetence**, the Court of Appeals found that it was petitioner's poor management strategies and poor collection from consumers which caused ABRECO's delayed loan payments and the retrogression of ABRECO's operation.<sup>46</sup>

On petitioner's motion for reconsideration, however, the Court of Appeals modified.<sup>47</sup> It ruled that since the bidding and procurement process for ABRECO's programs was the exclusive task of the Bids and Awards Committee, petitioner had nothing to do with the alleged irregular award of Sitio Electrification Program/Barangay Line Enhancement Program to Accurate. For this reason, therefore, he was cleared of the charge of **grave misconduct**.<sup>48</sup> Even then, petitioner was still found guilty of **gross negligence** for his supposed failure to ensure ABRECO's compliance with the proper procurement procedure.<sup>49</sup>

### The Present Petition

Petitioner now seeks affirmative relief from the Court *via* Rule 45 of the Rules of Court. He challenges anew NEAB's authority to order his removal from office and the dissolution of ABRECO's Board of Directors. These powers purportedly pertain to CDA and not to NEAB. At any rate, the findings of NEAB and the Court of Appeals were allegedly unsupported by substantial evidence.<sup>50</sup>

### Grave Misconduct

Petitioner maintains that he implemented the rate approved by the Board of Directors on ABRECO's consumers although the same was higher than the rate prescribed by ERC because as General Manager, it was his ministerial duty to do so. In fact, implementing the orders of the Board of Directors was one of the functions he ought to perform under ABRECO's By-laws.<sup>51</sup>

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<sup>45</sup> *Id.* at 90.

<sup>46</sup> *Id.* at 47.

<sup>47</sup> *Id.* at 63-71.

<sup>48</sup> *Id.* at 65-71.

<sup>49</sup> *Id.* at 66-67.

<sup>50</sup> *Id.* at 11-12.

<sup>51</sup> *Id.* at 14-15.

### **Gross Incompetence**

NEAB purportedly failed to specify which among the current payables of ABRECO were incurred during his incumbency for which he could be held liable for gross incompetence in the management of the electric cooperative. Because of NEAB's failure to grant loan assistance to ABRECO, the latter had to secure loans from private entities to maintain its power supply and keep it operational.<sup>52</sup>

ABRECO's alleged retrogression and his supposed incompetence are unsupported by evidence. All NEAB had against him was its incomplete audit report containing a mere general averment that ABRECO, through petitioner, contracted loans of significant amounts.<sup>53</sup>

As for the deposit of ABRECO's funds elsewhere other than ABRECO's depository bank, the same had to be done in order for these funds not to be garnished relative to the labor cases decided against it.

He further maintains that ABRECO complied in good faith with the methods of procurement *per* RA 9184 in the award of the project Sitio Electrification Program/Barangay Line Enhancement Program to Accurate.

### **Serious Dishonesty**

Petitioner avers that since the claims for reimbursement of ABRECO's drivers and utility workers had already been disapproved through notices of disallowance (NDs) issued by the Board of Directors, it was entirely the fault of its finance department that these claims were still recklessly paid.

### **Gross Negligence/Gross Neglect of Duty**

The complaints against him and ABRECO for non-remittance of SSS and Philhealth premium contributions were already withdrawn after therein complainants realized that petitioner, *et al.*, were not at fault. Thus, there is no longer any basis to hold him administratively liable for the delayed remittances. In any event, the remittance of these premium contributions was not his responsibility but that of ABRECO's Human Resources Department. He therefore should not be held liable for such delayed remittance.<sup>54</sup>

In its **Comment** dated July 19, 2021, NEAB, through the Office of the Solicitor General (OSG), counters that it has supervisory and disciplinary power over electric cooperatives under RA 10531. It maintains that petitioner's acts and omissions constitute grave misconduct, dishonesty, and gross inefficiency.<sup>55</sup>

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<sup>52</sup> *Id.* at 15.

<sup>53</sup> *Id.* at 13.

<sup>54</sup> *Id.* at 23.

<sup>55</sup> *Id.* at 170-186.

### Our Ruling

*NEAB is vested with supervisory and disciplinary powers over officers and members of the Board of Directors of electric cooperatives*

Petitioner claims that it is the CDA, not NEAB, which is vested with jurisdiction a) to order his removal from office based on the administrative offenses he allegedly committed; and b) to dissolve ABRECO's Board of Directors *per* Section 9 of Republic Act No. 6939 (RA 6939).<sup>56</sup>

The Court had already laid this issue to rest in *Zambales II Electric Cooperative, Inc. Board of Directors v. Castillejos Consumers Association, Inc.*<sup>57</sup> The Court ordained that the creation of the CDA did not divest NEA of its regulatory jurisdiction over electric cooperatives nor its disciplinary jurisdiction over the members of the boards of directors and officers of these electric cooperatives, thus:

#### A. *The NEA's creation and disciplinary jurisdiction*

The present NEA was created in 1973 under P.D. No. 269 to administer the country's total electrification on an area coverage basis, by organizing, financing and regulating electric cooperatives throughout the country. The NEA's enforcement powers under P.D. No. 269, however, was limited.

In 1979, P.D. No. 1645 amended P.D. No. 269 and broadened the NEA's regulatory powers, among others. Specifically, the amendments emphatically recognized the NEA's power of supervision and control over electric cooperatives; and gave it the power to conduct investigations, and impose preventive or disciplinary sanctions over the board of directors of regulated entities. Section 10 of P.D. No. 269, as amended by P.D. No. 1645 reads:

Section 10. *Enforcement Powers and Remedies.* — In the exercise of its power of supervision and control over electric cooperatives and other borrower, supervised or controlled entities, the NEA is empowered to issue orders, rules and regulations and *motu-proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions in all

<sup>56</sup> AN ACT CREATING THE COOPERATIVE DEVELOPMENT AUTHORITY TO PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES AS INSTRUMENTS OF EQUITY, SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, RATIONALIZING GOVERNMENT POLICIES AND AGENCIES WITH COOPERATIVE FUNCTIONS, SUPPORTING COOPERATIVE DEVELOPMENT, TRANSFERRING THE REGISTRATION AND REGULATION FUNCTIONS OF EXISTING GOVERNMENT AGENCIES ON COOPERATIVES AS SUCH AND CONSOLIDATING THE SAME WITH THE AUTHORITY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES OF 1990

<sup>57</sup> See 745 Phil. 618, 651 (2014)

matters affecting said electric cooperatives and other borrower, or supervised or controlled entities.

If the electric cooperative concerned or other similar entity fails after due notice to comply with the NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board of Administrators may avail of any or all of the following remedies:

x x x x

**(e) Take preventive and/or disciplinary measures including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide.**

Likewise, Section 24 of P.D. No. 269, as amended by P.D. No. 1645, stressed that the board of directors of a regulated electric cooperative is subject to the NEA's control and supervision. That provision reads:

Section 24. *Board of Directors.* — (a) The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of the NEA which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions.

The NEA's disciplinary jurisdiction over the petitioners stems from its power of supervision and control over regulated electric cooperatives and over the board of directors who manage their operation. In the exercise of this broad power, the NEA may take preventive and/or disciplinary measures including the suspension, removal and replacement of any or all of the members of the board of directors, officers or employees of the cooperative.

#### **B. *The Cooperative Code and the CDA***

The enactment in March 1990 of the Cooperative Code and R.A. No. 6939 establishing the CDA did not automatically divest the NEA of its control over the NEA's regulated entities.

Although Section 9 of R.A. No. 6939 transferred the NEA's registration functions of electric cooperatives to the CDA, the transfer did not amount to the consequent renunciation of the NEA's regulatory jurisdiction. In fact, the Cooperative Code cautions us against such a wholesale interpretation when it emphatically expressed "*that nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of [P.D. No.] 269.*"

x x x x

**E. The NEA and the electric cooperatives under the new law**

*At any rate, the Court judicially notices that on February 4, 2013, Congress enacted R.A. No. 10531, known as the National Electrification Administration Reform Act of 2013. Aware of the effects of restructuring the electric power industry under [R.A. No. 9136 or the Electric Power Industry Reform Act of 2001] the EPIRA on electric cooperatives under P.D. No. 269, as amended, and on the responsibilities of the appropriate government agencies, like the NEA and the CDA, Congress enacted R.A. No. 10531 with a declared threefold state policy: first, to empower and strengthen the NEA; second, to empower and enable electric cooperatives (organized under P.D. No. 269 and its amendments, and the Philippine Cooperative Code of 2008; and related laws) to cope with the changes brought about by the EPIRA; and third, to promote the sustainable development in the rural areas through rural electrification.*

*Towards these ends, Congress further authorized the NEA to “supervise the management and operations of all electric cooperatives.” Pursuant to its power of supervision, Congress granted it the following powers:*

X X X X

*(a) issue orders, rules and regulations, motu proprio or upon petition of third parties, to conduct investigations, referenda and other similar actions on all matters affecting the electric cooperatives;*

*(b) issue preventive or disciplinary measures including, but not limited to, suspension or removal and replacement of any or all of the members of the board of directors and officers of the electric cooperative, as the NEA may deem fit and necessary and to take any other remedial measures as the law or any agreement or arrangement with the NEA may provide, to attain the objectives of this Act: x x x (Emphases supplied)*

So must it be.

*Petitioner’s right to due process was violated when NEAB failed to cite which of the findings against him specifically pertained to grave misconduct, which of them pertained to serious dishonesty, and which ones pertained to gross incompetence.*



No less than the Constitution guarantees the right of a litigant to be informed of the facts and law on which decisions of courts and administrative tribunals are based. Section 14, Article VIII of the 1987 Constitution reads:

Section 14. No decision shall be rendered by any court without expressing therein *clearly and distinctly* the facts and the law on which it is based.

x x x x

In *Yao v. Court of Appeals*,<sup>58</sup> the Court emphasized that “[t]he parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court,” viz.:

x x x x

Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely *prejudicial* to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. x x x

x x x x

Also, in *Ang Tibay v. Court of Industrial Relations*,<sup>59</sup> the Court enumerated the components of administrative due process, among them, “[The tribunal or officer] should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it.”<sup>60</sup>

As stated, NEAB failed to pinpoint which of the acts allegedly committed by petitioner exactly pertained to the first, the second, and the third infraction charged. What NEAB simply did was make a swift shotgun statement that based on the results of its commissioned audit report, petitioner was found to have committed all three infractions. There was absolutely no

<sup>58</sup> 398 Phil. 86, 109 (2000).

<sup>59</sup> 69 Phil. 635, 645 (1940).

<sup>60</sup> See *Flores-Concepcion v. Judge Castaneda*, A.M. No. RTJ-15-2438 [Formerly OCA I.P.I. No. 11-3681-RTJ], September 02, 2020, citing *Ang Tibay v. Court of Industrial Relations*.

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effort at all to discuss each infraction, let alone, draw its one on one correspondence with the supposed evidence or factual findings on record.

This left petitioner groping in the dark when he appealed his case before the Court of Appeals and subsequently to this Court. He had to second guess which factual findings supposedly corresponded to which infraction, hence, unjustly hampering his ability to fully and intelligently frame and focus his defense and his appeal. It was like targeting or striking a moving ball in the dark. In fine, the Constitutional requirement that every decision should contain the tribunal's factual findings and the bases thereof undeniably has been violated, to the prejudice of petitioner whose right to due process was also consequently infringed.

By reason of such fatal infirmity, the Court of Appeals should have declared as void the assailed ruling of NEAB and freed petitioner from its debilitating shackles. But this, the Court of Appeals failed to do. Instead, it tried to dissect the ruling of NEAB and came out with its own one on one correspondence between the infraction and the supposed evidence.

In truth, however, there was no way to save the ruling of NEAB since it was *void ab initio*. Court judgments, decisions, orders, or other issuances that fall short of the mandate of Article VIII, Section 14 of the Constitution are nullified and struck down as void.<sup>61</sup>

In *Republic v. Legaspi, Sr.*,<sup>62</sup> the Court ruled that since it is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court, a decision that does not conform to the form and substance required by the Constitution and the law is void and deemed legally nonexistent.

At any rate, even assuming that the dispositions of the Court of Appeals had the effect of curing the incipient infirmity of the NEAB's decision, still petitioner's prayer for affirmative relief must be granted.

In administrative disciplinary proceedings, substantial evidence is required to support a verdict against the respondent. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>63</sup> The burden is on the complainants to prove their allegations by substantial evidence. The standard of substantial evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of.<sup>64</sup>

<sup>61</sup> See *Ganancial v. Cabugao*, G.R. No. 203348, July 6, 2020.

<sup>62</sup> 686 Phil. 100, 116 (2012).

<sup>63</sup> *Gadong v. Butlig*, A.M. No. P-19-4020, November 28, 2019.

<sup>64</sup> See *Office of the Ombudsman v. Manlulu*, G.R. No. 215986, September 21, 2020.

Here, we rule that the government failed to muster the required quantum of substantial evidence to support a verdict against petitioner for grave misconduct, gross incompetence, serious dishonesty, and gross negligence/gross neglect of duty. The Court of Appeals agreed with NEAB that petitioner is administratively liable for his actions. But it differed as to the classification of the administrative infractions allegedly committed by petitioner.

### ***Grave Misconduct***

Misconduct is a transgression of some established and definite rule of action, particularly, as a result of a public officer's unlawful behavior, recklessness, or gross negligence.<sup>65</sup> The misconduct is gross if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be proven by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.<sup>66</sup>

The Court of Appeals found petitioner liable for **Grave Misconduct** in view of the following acts or omissions he incurred:

- 1) Pursuant to Resolution No. 48, Series of 2015, he willfully violated the law when he allowed ABRECO to apply the fixed rate of P6.6156 per kilowatt-hour as passed on generation rate to its consumers instead of the ERC prescribed formula;<sup>67</sup>
- 2) He caused ABRECO to incur loans from private entities with a monthly interest of five percent (5%) to six percent (6%);
- 3) He failed to ensure the timely remittance of the employees' Philhealth, SSS, and Pag-IBIG premium contributions to the appropriate government agencies;
- 4) He failed to ensure compliance with ABRECO's internal accounting procedures as he allowed the deposit of its funds elsewhere other than its depository bank; and
- 5) He approved dubious reimbursements in favor of ABRECO's drivers or utility workers

We are not persuaded.

<sup>65</sup> *Domingo v. Civil Service Commission*, G.R. No. 236050, June 17, 2020.

<sup>66</sup> *Judge Buenaventura v. Mabalot*, A.M. No. P-09-2726 [Formerly OCA IPI No. 08-2923-P] and A.M. No. P-10-2884 [Formerly OCA IPI No. 08-2750-P], 716 Phil. 476, 494 (2013).

<sup>67</sup> *Rollo*, p. 48

**I. Charging higher generation rate to ABRECO's consumers pursuant to Board Resolution No. 48, Series of 2015, in violation of the ERC prescribed formula**

NEAB, as affirmed by the Court of Appeals, found that charging ABRECO's customers at a rate different from the formula prescribed by the ERC, is grave misconduct on the part of petitioner. On the other hand, petitioner asserts that imposing the higher rate on the consumers was simply done in the performance of his ministerial duty to implement ABRECO's Board Resolution No. 48, Series of 2015.

A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and *without regard to the exercise of [one's] own judgment or discretion* upon the propriety or impropriety of the act done.<sup>68</sup>

Jurisprudence ordains that the implementation of a board resolution is a ministerial duty and the implementing officer has no competence to adjudge the board resolution as invalid.

In *Buscaino v. Commission on Audit*,<sup>69</sup> the Court held that since petitioner, then the Chief Financial Management Officer of Polytechnic University of the Philippines (PUP), disbursed the housing allowance in favor of PUP's President pursuant to a Resolution of the Board of Trustees, the disbursement was deemed justified, hence, should not be disallowed by the Commission on Audit. The Court further ruled that it was beyond petitioner's competence to pass upon the validity of such board resolution, his duty with respect thereto being purely ministerial. Petitioner could not have questioned the grant of housing allowance as his task was just to certify that the disbursement was properly supported by the Resolution of the PUP Board of Trustees.

Applying *Buscaino* here, after ABRECO's Board of Directors already resolved to charge a higher rate to its consumers, it was beyond petitioner's power<sup>70</sup> as General Manager to question it. His duty as such was to implement the Board Resolution. No other. Surely, for performing his ministerial duty as General Manager of ABRECO, petitioner cannot be held liable for Grave Misconduct.

**II. Incurring loans from private entities with monthly interest of five percent (5%) to six percent (6%)**

<sup>68</sup> *Philippine National Police-Criminal Investigation and Detection Group v. Villafuerte*, G.R. Nos. 219771 & 219773, September 18, 2018.

<sup>69</sup> 69 Phil. 886, 907 (1999).

<sup>70</sup> Under ABRECO's by laws, one of petitioner's functions is to "implement the duly approved plans and programs of the cooperative and any other directive or instruction of the BODs."

The Court of Appeals held that ABRECO's retrogression came about because petitioner contracted loans from different private creditors for five (5) to six (6) percent monthly interest.

Petitioner nonetheless claims it was only after NEA no longer granted ABRECO's repeated requests for financial assistance that he, as General Manager was left without any recourse but to secure loans from private entities in order to pay off its existing urgent obligations, including those he inherited from his predecessors.

At the outset, the identity of the private entities from whom petitioner obtained loans, the specific amounts of these loans, and the dates they were incurred were not even borne in the so called "comprehensive" audit report. It was certainly the height of injustice, nay, oppression, for petitioner not to have been confronted with the actual loan amounts, the identities of the creditors, and the definite period they were supposedly incurred. More so considering his vigorous assertion that even those incurred by his predecessors are also being blamed on him. Indeed, this is another violation of petitioner's right to be sufficiently informed of the infractions for which he was sought to be dismissed from the service.

In any case, petitioner gave a valid reason why he had to borrow funds from private entities for five to six percent monthly interest to keep ABRECO's operation afloat. It was because NEA no longer granted financial assistance to ABRECO despite the latter's persistent requests and notwithstanding NEA's legal obligation to do so under Section 4 of PD No. 269, as amended by RA 10531, thus:


*SEC. 4. Powers, Functions and Privileges of the National Electrification Administration.* - To strengthen the electric cooperatives, help them become economically viable and prepare them for the implementation of retail competition and open access pursuant to Section 31 of the EPIRA, the NEA is authorized and empowered to:

x x x x

(g) provide institutional, **financial** and technical assistance to electric cooperatives upon request of the electric cooperatives; (Emphasis supplied)

x x x x

Notably, NEA did not dispute ABRECO's claim that it made persistent requests for financial assistance from NEA which the latter nonetheless invariably declined. But NEAB caught itself in contradiction when in one breadth, it commiserated with ABRECO for its sad predicament of having to resort to high interest loans just to pay off its power consumption bills or stop its operation altogether; but in another breadth, it found



petitioner administratively liable for obtaining these loans. This is definitely illogical, nay, unreasonable.

To sum up, petitioner does not deny that he resorted to obtaining loans from different private creditors for five percent (5%) to six percent (6%) monthly interest incurred between 2015 to 2016. Altogether, the interest for these totaled ₱13,567,225. Per NEA's audit, too, these loans were contracted to "pay its power bills [and] avoid disconnection."

What we see here was a general manager who exhausted all possible ways and means to rehabilitate ABRECO's dwindling financial situation. Had he not secured the loans in question, ABRECO's operation and power supply would have been totally shut down; and the entire province of Abra literally would have lived in total darkness for an undetermined length of time. Then death and chaos in hospitals, stoppage of food production and distribution, stoppage of work, and criminals freely roaming around or waiting to pounce on their victims in the dark alleys of Abra would have also happened.

Evidently, contracting the loans in question was a necessary judgment call for petitioner. Ironically, it was NEA's refusal to extend financial assistance to ABRECO which forced petitioner "to clutch the blade of a knife" so to speak just so he could save ABRECO and its consumers from imminent closure and living a life in a ghost like town.

On this score, the opinion of both NEAB and the Court of Appeals that ABRECO could have secured loans for a lower interest rate is just that. An opinion. For all intents and purposes, petitioner is presumed to have contracted the loans at the best interest rates available to ABRECO at the time the loans were most needed, absent any substantial proof to the contrary.

### **III. Delayed Remittance of the employees' premium contributions to government agencies**

Notably, the audit report failed to bear out the details pertaining to the specific period or periods the employees' contributions were remitted late, the amounts of these contributions, and the reason or reasons for the delayed remittance. It also did not disclose how many employees were affected and why the remittance got delayed. In any event, NEA has not responded to petitioner's manifestation that the employees who complained against the non-remittance had already withdrawn their complaint because they realized it was not the fault of petitioner *et al.*

More important, NEA has not disputed that the duty to remit the employees' contributions lies with ABRECO's Human Resource Department.

#### **IV. Deposit of ABRECO funds**

Petitioner does not deny that for a certain period, he allowed the deposit of ABRECO funds to another bank which was not its designated depository bank. He explains though that this was necessary to protect the funds earned by or owing to ABRECO and to enable it to continue its day to day operation as an electric cooperative. This included the funds for the salaries of its employees, maintenance of machineries, purchase of essential goods and services, and paying off its other equally urgent obligations.

We agree.

For one, there is no merit to NEA's claim that petitioner was thwarting the writ of garnishment when he allowed the deposit of the funds in question with another bank. Notably, the writ of garnishment was already served on the depository bank and the entire deposit of ABRECO there was already frozen. There was nothing more to thwart.

For another, garnishment is a process by which the entire, not just a portion of the judgment debtor's deposit will remain frozen for an undetermined length of time until the execution of judgment itself is fully satisfied. This holds true notwithstanding that the garnished bank deposit or deposits already exceed the amount of the judgment debt itself. Also, the writ of garnishment will apply to all subsequent deposits in the subject bank account for as long as the writ remains effective.

Under these circumstances, therefore, petitioner had all the legitimate reason to cause the opening of a new account in another bank where ABRECO funds could be deposited and freely withdrawn for its operation and for the payment of its employees' salaries and other obligations. It was indeed a necessary means to save the operation of the cooperative and prevent its beneficiaries, the people of Abra, no less, from suffering extended power outage and to save the funds earmarked for the salaries of ABRECO employees and for payment of ABRECO's urgent bills and obligations and maintenance expenses, among others.

To emphasize, opening a new account with another bank was a judgment call for ABRECO's survival, pure and simple. It was never shown to have been for petitioner's pecuniary benefit or personal gain.

#### **V. Approving questionable reimbursements**

With regard to the reimbursement claims of ABRECO drivers and utility workers, petitioner asserts, and NEA does not dispute, that ABRECO itself had already issued notices of disallowance on these claims, albeit it was ABRECO's Finance Department which still erroneously processed the

disapproved claims and recommended their approval to petitioner who relied and affirmatively acted thereon.

In *Joson III v. COA*,<sup>71</sup> the Court ruled that just because petitioner was the governor of Nueva Ecija did not automatically make him the party ultimately liable for the disallowed amount. He cannot be held liable simply because he was the final approving authority of the transaction in question and that the employees who processed the same were under his supervision. Petitioner, as the governor of Nueva Ecija, was responsible for the whole province. With the amount of paperwork that normally passed through his office and the numerous documents he had to sign, it would be counterproductive to require petitioner to specifically and meticulously examine every document that passes his office. Thus, petitioner had the right to rely to a reasonable extent on the good faith of his subordinates. Mere signature does not result in a liability of the official involved without any showing of irregularity on the document's face such that a detailed examination would be warranted. Liability depends upon the wrong committed and not solely by reason of being the head of a government agency.

Here, while as General Manager, petitioner was tasked to oversee ABRECO's overall operations, he was not expected to review every action done by his subordinates and he cannot be made responsible for all their misfeasance or malfeasance in the performance of their duty absent any showing that further inquiry should have been made by him. In any event, the return of the disallowed payment may still be required from the recipients themselves who were not entitled thereto.

On his failure to account for or support his own reimbursement claim *i.e.*, ₱394,184.00 out of ₱602,114.00, it is a requirement of due process that parties be confronted with the acts they are being held liable for to afford them an opportunity to properly address the acts or omissions complained of.<sup>72</sup>

Here, such opportunity was not given to petitioner before ABRECO itself. In fact, no corresponding notice of disallowance was issued by ABRECO itself. Without this notice of disallowance, the reimbursement claim is presumed to be valid and justified.

At any rate, the supposed irregular claim for reimbursement came to fore for the first time only after NEAB initiated an audit on ABRECO. According to the audit report, petitioner received a reimbursement of ₱394,184.00 which NEA asserts should have been disapproved because the auto parts supposedly purchased using this amount did not pertain to any of the vehicles owned by ABRECO. Assuming this to be true, the claim should have been disallowed on audit, and petitioner, required to return the

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<sup>71</sup> 820 Phil. 485, 502 (2017).

<sup>72</sup> *Secretary of Justice v. Lantion*, G.R. No. 139465, January 18, 2000, citing *Aniag, Jr. v. Commission on Elections*, 237 SCRA 424.



disallowed payment. In any case, the mere fact that he claimed reimbursement for items which turned out to be not beneficial to the cooperative should not automatically make him liable for grave misconduct. There ought to be an evidence of corruption, willful intent to violate the law, or disregard of established rules, which must be proven by substantial evidence. To be sure, none of these elements was proven here.

Neither are the elements of simple misconduct present here. It was not established how petitioner's supposed erroneous claim for reimbursement and ABRECO's erroneous payment thereof resulted from an utter disregard of established and definite rule of action, unlawful behavior, recklessness, or gross negligence on the part of petitioner.

### *Serious Dishonesty*

Dishonesty is defined as the disposition to lie, cheat, deceive or defraud, betray; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness.<sup>73</sup> Dishonesty requires **malicious intent** to conceal the truth or to make false statements. Simply put, dishonesty is a **question of intention**.<sup>74</sup>

Under Section 3 of the Civil Service Commission (CSC) Resolution No. 06-0538, dishonesty is considered serious when attended by any of the following circumstances:

1. The dishonest act caused serious damage and grave prejudice to the government;
2. The respondent gravely abused his authority in order to commit the dishonest act;
3. Where the respondent is an accountable officer, the dishonest act directly involves property; accountable forms or money for which he is directly accountable; and respondent shows intent to commit material gain, graft and corruption;
4. The dishonest act exhibits moral depravity on the part of the respondent;
5. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;
6. The dishonest act was committed several times or on various occasions;
7. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets;
8. Other analogous circumstances.

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<sup>73</sup> *Re: Samuel R. Ruñez, Jr.*, A.M. No. 2019-18-SC, January 28, 2020.

<sup>74</sup> *Ramos v. Rosell*, G.R. No. 241363, September 16, 2020.



The Court of Appeals found petitioner guilty of **Serious Dishonesty** for the following acts:

1. adopting highly irregular accounting and internal control policies by approving dubious reimbursements; and
2. causing the payment of P3,223,000.00 legal fees for services rendered to ABRECO and in partial satisfaction of judgments against it in labor cases despite the lack of any board resolution authorizing such payment.

**I. Adopting highly irregular accounting and internal control policies by approving dubious reimbursements**

This is a recycled ground from the other charge for grave misconduct against petitioner. It was already amply addressed in the preceding discussion which we need not repeat here. In addition, we note that while the so-called highly irregular accounting and internal policies are imputed to have been adopted by petitioner, there is no mention what these policies are and how they supposedly resulted in the erroneous approval of the claims. This is another reason why petitioner should also be exonerated from the charge of simple or serious dishonesty.

**II. Payment of legal fees without authority from the Board of Directors**

Petitioner cannot be held liable for serious dishonesty for authorizing, *sans* any board resolution, the payment of legal fees **due to the lawyers** who represented ABRECO in the labor cases filed against it. When NEA speaks of payment of legal fees for services already rendered, it goes without saying that there was already an approved lawyers' engagement by the board itself. Hence, what ought to follow was simply the implementation of this engagement such as the payment of legal fees for services already rendered, which should no longer require another board resolution.

Suffice it to state that there is absolutely no evidence that in allowing the payment, petitioner was impelled by **malicious intent** to conceal the truth or to make false statements, an essential element of the charge of serious dishonesty.<sup>75</sup>

***Gross Negligence***

The Court of Appeals likewise found petitioner guilty of gross negligence in not ensuring that ABRECO adhered to proper procurement

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<sup>75</sup> *Id.*

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procedure.<sup>76</sup> On this score, NEAB zeroed in on the award of the Sitio Electrification Program/Barangay Line Enhancement Program to the company named Accurate despite the alleged fact that the Invitation to bid was not posted online; Accurate's bid of ₱15,950,561 is higher by ₱4,240.06 than the ₱15,946,321.72 approved budget; and a check voucher in favor of Accurate was issued, sans a prior post qualification evaluation.

We do not agree.

**Gross negligence** “refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property.” It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.<sup>77</sup>

In contrast, **simple neglect of duty** means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a “disregard of a duty resulting from carelessness or indifference.”<sup>78</sup>

In the absence of any indication in the records submitted to petitioner by the Bids and Awards Committee and other offices directly in charge of the posting requirement, the post evaluation requirement, and the accurate comparative computations up to the last centavo between the approved budget and the amount of the winning bid, as General Manager of ABRECO, he had all the right to accord the presumption of regularity and credence to the certifications issued and submitted to him by the offices directly assigned to comply with the procedure prescribed by law. In so doing so, petitioner cannot be held liable for gross negligence or even simple negligence, especially because the NEA itself could not point to any document which should have triggered his curiosity to conduct a further inquiry on the veracity of the certifications forwarded him.

As decreed in *Arias v. Sandiganbayan*,<sup>79</sup> all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. While *Abubakar v. People of the Philippines*<sup>80</sup> elucidates that reliance in good faith on the acts of the subordinates will not shield the superior when there are

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<sup>76</sup> *Rollo*, pp. 66-67.

<sup>77</sup> See *Office of the Ombudsman v. De Leon*, 705 Phil. 26 (2013).

<sup>78</sup> *Id.* at 38.

<sup>79</sup> G.R. Nos. 81563 & 82512, December 19, 1989.

<sup>80</sup> See 834 Phil. 435 (2018).

circumstances which should have prompted him to make further inquiries,<sup>81</sup> nothing here indicates that there were reasons for petitioner to doubt and make such further inquiry.

All told, NEA failed to prove by substantial evidence petitioner's supposed administrative culpability for grave misconduct, dishonesty, gross incompetence, and gross negligence/gross neglect of duty. Verily, there is no factual or legal basis for petitioner's removal from office as General Manager of ABRECO.


**ACCORDINGLY**, the petition is **GRANTED**. The Decision dated June 15, 2020 and Resolution dated November 10, 2020 of the Court of Appeals in CA G.R. SP No. 161126 are **REVERSED** and **SET ASIDE**. The administrative complaint against petitioner GM Loreto P. Seares, Jr. is dismissed for lack of merit. He is immediately **REINSTATED** to his position as General Manager of Abra Electric Cooperative, Inc., with full back salaries and benefits and without loss of seniority rights.

Six percent (6%) legal interest *per annum* is imposed on the monetary award, reckoned from finality of this Decision until fully paid.

**SO ORDERED.**

  
AMY C. LAZARO-JAVIER  
Associate Justice

**WE CONCUR:**

  
ALEXANDER G. GESMUNDO  
Chief Justice  
Chairperson

  
ALFREDO BENJAMIN S. CAGUIOA  
Associate Justice

(on wellness leave)  
MARIO V. LOPEZ  
Associate Justice

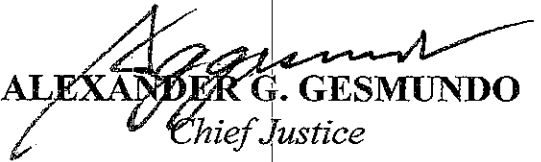
<sup>81</sup> *People v. Talaue*, G.R. No. 248652, January 12, 2021



**JHOSEP Y. LOPEZ**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*

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